



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2238/2013\*, \*\*

<i>Communication submitted by:</i>	N.P.S.S. and M.K. (represented by counsel, Stewart Istvanffy)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Canada
<i>Date of communication:</i>	13 March 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 25 March 2013 (not issued in document form)
<i>Date of adoption of decision:</i>	29 March 2019
<i>Subject matter:</i>	Deportation to India
<i>Procedural issues:</i>	Lack of substantiation; incompatibility with the Covenant
<i>Substantive issues:</i>	Right to an effective remedy; right to life; prohibition of torture and cruel, inhuman and degrading treatment; procedural guarantees before alien expulsion and right to equality before courts and tribunals and to fair trial
<i>Articles of the Covenant:</i>	2, 6, 7, 13 and 14
<i>Articles of the Optional Protocol:</i>	2 and 3

1.1 The authors of the communication are N.P.S.S. and M.K.,<sup>1</sup> both nationals of India. They claim that the State party has violated their rights under articles 2, 6, 7, 13 and 14 of the Covenant. The Optional Protocol entered into force for the State party on 19 May 1976.

\* Adopted by the Committee at its 125th session (4–29 March 2019).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Christopher Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi. Pursuant to rule 108 of the Committee's rules of procedure, Marcia Kran did not participate in the examination of the communication.

<sup>1</sup> The authors informed the Committee that M.K. was three months pregnant at the time of the submission of the present communication.



1.2 On 25 March 2013, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from returning N.P.S.S. to India while his communication was pending before the Committee and to provide information about the travel documents of M.K. On 28 May 2013, the State party requested that the interim measures be lifted and informed the Committee that it had issued valid travel documents for M.K. (see para. 4.5 below). On 21 June 2013, the Special Rapporteur decided to deny the request to lift the interim measures for N.P.S.S. and extend such measures to M.K. The authors are currently in Canada.

### **The facts as presented by the authors**

2.1 On 2 August 2000, Punjab Police officers arrived at the home of N.P.S.S. in Punjab to request information about his cousin, who was suspected of being “a militant”. They arrested, interrogated and tortured N.P.S.S. Two days later, he was released.

2.2 In January 2001, M.K. married G.S., who was residing primarily in Germany at the time. M.K. claims to have been treated as a slave and a domestic servant by her in-laws during her marriage and to have been physically and sexually abused by her husband when he was in India. When she could no longer accept the abuse she was suffering, she filed for divorce, but her husband and in-laws did not appear in court. They perceived it as an attack on their honour. The divorce was pronounced without the contestation of the first husband of M.K., G.S. In January 2007, the authors were married, with the support of their families.<sup>2</sup>

2.3 The wedding of the authors was badly received by G.S.’s family, who had close ties with governmental and police officials in India. More particularly, the uncle of G.S. was himself a police officer and his father was a member of the Congress Party. G.S. communicated from Germany with N.P.S.S. and threatened that if he did not leave M.K., he would kill him. Moreover, the uncle and the father of G.S. arrived at the home of the authors in Punjab, accompanied by the police, to force them to divorce. Nevertheless, the authors decided to remain together.

2.4 On 9 November 2007, the Punjab Police went back to the home of the authors and arrested them. N.P.S.S. was interrogated and tortured at the police station. M.K. was interrogated, tortured and raped separately and was raped again by a police inspector in front of N.P.S.S. The father of G.S. told N.P.S.S. that his wife would not be able to live in their society with the same dignity and respect. To protect his wife, N.P.S.S. promised to divorce her. After the intervention of many prominent people and the payment of a large bribe, on 12 November 2007, the authors were released. They were fingerprinted and forced to sign blank papers, and N.P.S.S. was forced to report to the police station every month.

2.5 Owing to the above, the authors fled from Punjab to Delhi. However, they quickly realized that the police were still pursuing them. From December 2007 to June 2008, the authors resided in Delhi at a friend’s house. They always stayed indoors, given that they were afraid of going out. They eventually decided to leave India because of the pressure against them and their family.

2.6 On June 2008, after transiting in Singapore and Hong Kong, China, they entered Canada on visitor’s visas. Two weeks after their arrival, they filed a refugee claim. In October 2010, they had a hearing at the Immigration and Refugee Board of Canada. On 11 April 2011, their claim was denied on the basis of an available internal flight alternative within India. They applied for a judicial review of the latter decision. In August 2011, their application for judicial review was denied.

2.7 Given that their refugee claim was denied, the authors filed both a pre-removal risk assessment application and an application for permanent resident status on humanitarian and compassionate grounds to allow them to stay in Canada. On 5 April 2012, both applications were denied, by two separate decisions. All the new evidence of risk was rejected on the basis that they had an available internal flight alternative and because of

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<sup>2</sup> The authors provide affidavits of their parents confirming their support.

doubts about the documents they had presented as evidence, even though they had been confirmed as valid by the Punjab Human Rights Organization, one of the main human rights organizations in the Punjab. The authors brought both denials to the Federal Court but were not granted judicial review in either case.

2.8 On 12 October 2012, the authors filed a new application for a pre-removal risk assessment, alleging new evidence of the risk facing them if returned to India. The authors submitted, as new evidence, a number of affidavits of prominent individuals and family members from their area confirming the facts they claimed.<sup>3</sup> The new pre-removal risk assessment application, however, was never considered because there is a legislative bar against submitting a new case within the first 12 months after the receipt of a negative decision. The new application submissions were therefore not eligible to be presented to the Canadian asylum authorities until 5 April 2013.

2.9 On 4 March 2013, the authors filed an application for leave and for judicial review of the removal decision against N.P.S.S., to postpone his removal. They also filed a motion for a stay of their deportation. On 20 March 2013, the Federal Court refused to hear their motion.

2.10 The authors claim that they have tried everything possible under domestic Canadian law, which did not appear to provide an effective recourse to correct errors. They have also submitted a request for a declaratory judgment on the one-year bar against filing a new pre-removal risk assessment application.

2.11 Lastly, the authors informed the Committee that, in September 2011, a false criminal case had been registered against N.P.S.S. in India for events that allegedly took place when he was already in Canada. In October 2011, he was declared to be a proclaimed offender under Indian law by the Subdivisional Court in Dasuya, allegedly putting him in great danger of detention and torture if returned to India.<sup>4</sup>

### **The complaint**

3.1 The authors submit that there is very strong evidence showing that they are still at risk of severe mistreatment, torture and honour killing in India.<sup>5</sup>

3.2 The authors claim that there is a violation of their right to due process and to an effective remedy given that no avenue was provided for the presentation and review of new evidence. The authors add that the denial of access to administrative or judicial relief without evaluation of the new evidence does not respect the right to present one's case before the proper authority to seek justice.

3.3 The authors note that the prohibition of return to torture or to extrajudicial execution is a fundamental right under international law and that this involves articles 6 and 7 of the Covenant, read in conjunction with article 2 of the Covenant.

3.4 The authors claim that the absence of any means of having a case considered on the substance because of the one-year bar against pre-removal risk assessment<sup>6</sup> applications after a decision deprives the authors of any effective recourse and violates article 13 of the Covenant.

3.5 Lastly, the authors claim a violation of article 14 of the Covenant on the basis of the "many violations of the right to a hearing and the right to an effective recourse". In

<sup>3</sup> The authors attach a letter of support from a Member of the Punjab Legislative Assembly and one from the Punjab Human Rights Organization confirming the problem of honour killing and the system of impunity around this crime in India.

<sup>4</sup> The authors provide two documents in this regard: First Information Report No. 45 accusing N.P.S.S. of having participated in an assault on another individual in September 2011 and a court document declaring N.P.S.S. to be a proclaimed offender in the case described in First Information Report No. 45.

<sup>5</sup> The authors provide a letter from the Punjab Human Rights Organization, dated 21 July 2012, recommending that the authors be helped and not deported, given that "honour killing is a fact of life in India, more so in North India".

<sup>6</sup> The authors refer to Committee against Torture, *Singh v. Canada* (CAT/C/46/D/319/2007).

particular, the authors refer to the fact that: (a) the Federal Court refused to hear their motion for a stay of deportation for “flimsy” reasons, depriving them of a fair trial; and (b) their second pre-removal risk assessment application was denied on procedural grounds.

### **State party’s observations**

4.1 In its observations dated 17 May 2013, the State party informed the Committee that M.K. did not possess a valid travel document because her passport had expired and that Canada was working with the Indian authorities to obtain a travel document for her, as she was subject to a valid removal order.

4.2 The State party submits that an interim measures request is not appropriate in this case. It argues that the alleged risks of torture or severe mistreatment against the authors are related to a family dispute over their marriage.

4.3 The State party further argues that Canadian domestic decision makers assessed the authors’ risk of torture and cruel treatment if returned to India and concluded that the authors had a reasonable internal flight alternative, allowing them to live in other parts of India, outside of the Punjab.<sup>7</sup> It adds that there is no evidence in the present communication that refutes the availability of an internal flight alternative for the authors. Canada also states that individuals must seek to minimize their risk of harm, where possible, through internal relocation or resettlement within their own State and submits that this is a well-established principle in international refugee law, supported by the views of international human rights treaty bodies.<sup>8</sup> The State party argues that it is reasonable to expect the authors to relocate to another part of India, where they will not be at risk of interference or harm by family members who do not agree with their life choices. It adds that neither of the authors is a high-profile or politically engaged individual who would be of interest to the police or other authorities of the State throughout India. There is also no evidence that members of their families or M.K.’s former in-laws could gain the assistance of the police or other State authorities throughout the entire country. The State party submits that any risk they might face is purely local or, at most, a risk confined to the Punjab region.

4.4 Regarding the new evidence submitted by the authors in their second pre-removal risk assessment application, in October 2012, the State party contends that the second application has not been yet considered owing to recent amendments to the Immigration and Refugee Protection Act. One of these amendments imposes a 12-month ineligibility period for the submission of pre-removal risk assessment applications for claimants whose claims have been rejected. The State party submits that the purpose of this amendment is to streamline the asylum system by eliminating the duplication and repetition of risk assessments within an appropriate time frame and to deter unfounded claims by claimants seeking to delay their removal from Canada. The authors’ 12-month pre-removal risk assessment ineligibility period expired on 5 April 2013. Therefore, considering the availability of a further risk assessment for the authors under domestic procedures, the State party claims that it is not appropriate to comment at the present time on the new evidence attached to the communication, as it has not yet been considered by a pre-removal risk assessment officer. The State party notes that if the authors do not submit a second pre-removal risk assessment application within a reasonable time, the present communication should be deemed inadmissible, given that the authors would not have exhausted all available domestic remedies. It further notes that their communication is, at least in part, based on new evidence and the authors have not yet had this evidence assessed by a domestic decision maker.

4.5 In its observations dated 28 May 2013, the State party informed the Committee that it had obtained a valid travel document for M.K. and requested the lifting of the interim measures. It also informed the Committee that, on 9 May 2013, the authors had applied for a second pre-removal risk assessment, which would be considered in due course by

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<sup>7</sup> The State party refers to the decision of the Immigration and Refugee Board dated 11 April 2011 and to the pre-removal risk assessment decision dated 5 April 2012, both provided by the authors in their initial submission.

<sup>8</sup> The State party refers to Committee against Torture, *S.S.S. v. Canada* (CAT/C/35/D/245/2004), para. 8.5, and *B.S.S. v. Canada* (CAT/C/32/D/183/2001), para. 11.5.

Canadian officials. The State party notes that, under Canadian law, this application does not prevent the removal of the authors to India.

#### **Authors' comments on the State party's observations**

5. In their comments dated 19 June 2013, the authors informed the Committee that their request for a stay of the removal M.K., who was six months pregnant at the time, had been denied by a decision of 12 June 2013. They added that the Canada Border Services Agency required M.K. to present a valid ticket to the Agency for her return to India by 24 June 2013. The authors noted that in the decision, it was stated that M.K.'s pregnancy and pending pre-removal risk assessment application were not obstacles to her removal. The authors also informed the Committee that they had applied for leave to appeal the latter decision.

#### **State party's additional observations on admissibility and the merits**

6.1 In its observations dated 16 September 2013, the State party provided a summary of the facts and domestic proceedings related to the present communication. The State party submits that the communication is inadmissible and, alternatively, without merit.

6.2 The State party claims that the allegations of the authors with respect to violations of articles 6 and 7 of the Covenant are not sufficiently substantiated and are thus inadmissible. The State party argues that the authors have failed to establish, on even a prima facie basis, that "the necessary and foreseeable consequence of the deportation"<sup>9</sup> would be that the authors would be killed or tortured if returned to India.

6.3 The State party submits that the difficulties of the authors spring from a divorce and remarriage that occurred more than six years ago. It adds that their problems are local in nature and confined to their home state of Punjab and that they have not established that they would be unable to lead a life free of personal risk in another part of India.

6.4 The State party notes that an internal flight alternative is a recognized element of risk assessment in international law,<sup>10</sup> as individuals must seek to minimize their risk of harm, where possible, through internal relocation or resettlement within their own State. The State party claims that in the present communication, there is no evidence showing that the authors cannot live without risk outside the Punjab. On the one hand, the State party notes that the Refugee Protection Division examined the evidence and heard the testimony of the authors and concluded that they do have available internal flight alternatives and that "it is objectively reasonable to expect the claimants to move to a different part of the country ... the tribunal does not believe that the persecutors would have the volition nor the ability to seek out and find the claimants in one of these internal flight alternatives".<sup>11</sup> The latter statement was supported by a British compilation of Danish, American and Canadian research indicating that Sikhs can relocate outside of the Punjab without police intervention.<sup>12</sup> The State party also notes that the Refugee Protection Division added that the authors had lived in Delhi for a period of six months and that although they claim to have stayed indoors, they did not have any problems during that period. On the other hand, the State party notes that the pre-removal risk assessment officer considered new evidence indicating that N.P.S.S. had been declared a proclaimed offender.<sup>13</sup> However, it concluded that the documents presented by the authors in support of this allegation did not have any

<sup>9</sup> The State party refers to, inter alia, *A.R.J. v. Australia* (CCPR/C/60/D/692/1996) and *Kindler v. Canada* (CCPR/C/48/D/470/1991), para. 14.3.

<sup>10</sup> The State party refers to the Office of the United Nations High Commissioner for Refugees (UNHCR) Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the context of article 1A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees (HCR/GIP/03/04), to *S.S.S. v. Canada*, para. 8.5 and *B.S.S. v. Canada*, para. 11.5.

<sup>11</sup> The State party refers to the Refugee Protection Division's decision of 11 April 2011, paras. 12–13.

<sup>12</sup> The State party refers to the Refugee Protection Division's decision of 11 April 2011, para. 14, and to a country of origin information report on India published by the United Kingdom of Great Britain and Northern Ireland Border Agency, Home Office (4 January 2010), paras. 20.58–20.61.

<sup>13</sup> The State party refers to the alleged First Information Report No. 45 and court document (see footnote 4 above).

probative value, given that they had several procedural flaws.<sup>14</sup> Moreover, the authors were not able to explain how they had obtained these documents. Therefore, the State party claims that the authors did not establish real and personal risk of harm upon return to India and did not provide evidence showing that the Canadian decision makers were biased or arbitrary or had failed to accord them a fair and thorough hearing of their claims.

6.5 Concerning the alleged “new evidence” provided by the authors to the Committee, the State party notes that it consists only of affidavits from individuals attesting to their risk of harm upon return to their home town in Punjab. Hence, the State party submits that, once again, the authors did not establish a real and foreseeable risk of harm throughout India.

6.6 Regarding the authors’ allegations of a violation of article 13 of the Covenant, the State party argues that they are inadmissible on grounds of non-substantiation.

6.7 The State party rejects the allegation that the 12-month ineligibility period for submission of a pre-removal risk assessment application is a violation of its obligations under article 13 of the Covenant. The State party notes that the authors’ risks in their country of origin have already been thoroughly assessed on the basis of an oral hearing before the Refugee Protection Division as well as a second pre-removal risk assessment. The State party considers that a further risk assessment within the interval of 12 months is not generally necessary. Furthermore, the State party submits that when there has been a change in country conditions, there are exemptions to the application of the 12-month pre-removal risk assessment ineligibility period.<sup>15</sup> The State party also notes that claimants who allege to have new personalized evidence of risk have the possibility of requesting a deferral of removal. The State party considers that there was no real substance in the “new information” presented by the authors before the authorities; otherwise, the 12-month ineligibility period would not have been applied to them.

6.8 The State party argues that the proceedings challenged by the authors satisfy all guarantees contained in article 13 of the Covenant. The State party notes that the authors: (a) had their case heard by an independent tribunal; (b) were represented by counsel; and (c) had full opportunity to participate in the proceedings (both orally and in writing), to apply for judicial review of denial decisions and to apply for pre-removal risk assessment and permanent residence on humanitarian and compassion grounds.

6.9 The State party further notes that article 13 does not grant non-nationals a broad right to asylum or a right to remain in the territory of a State party. After the expiration of the authors’ visitor’s visas, they were allowed to stay in Canada for the purpose of having their refugee claim determined and their applications for pre-removal risk assessment and permanent resident status on humanitarian and compassionate grounds assessed. The State party submits that article 13 is aimed at regulating only the procedure and not the substantive grounds for alien expulsions and that its purpose is to prevent arbitrary expulsions.<sup>16</sup>

6.10 In relation with the allegations made by the authors regarding a violation of article 14 of the Covenant, the State party submits that they are inadmissible on the grounds of incompatibility with the provisions of the Covenant. The State party submits that the proceedings challenged by the authors do not involve either “the determination of any criminal charge” or “rights and obligations in a suit of law”. Thus, it claims that the provisions on criminal charges set forth in article 14 are irrelevant to the present communication.<sup>17</sup>

6.11 Furthermore, the State party objects to the allegations by the authors that “there are many numbers of violations of the right to a hearing or the right to an effective recourse”. The State party reiterates that the authors received two risk assessments, also reviewed by the Federal Court; applied for a third risk assessment (second pre-removal risk assessment

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<sup>14</sup> Such as the absence of dates, signatures and official stamps or seal, contrary to procedures followed in India.

<sup>15</sup> Canadian Immigration and Refugee Protection Act, section 112 (2.1).

<sup>16</sup> The State party refers to the Committee’s general comment No. 15 (1986) on the positions of aliens under the Covenant, para. 10.

<sup>17</sup> The State party refers to *Zundel v. Canada* (CCPR/C/89/D/1341/2005), para. 6.8.

application); applied for permanent residence on humanitarian and compassionate grounds; and sought leave to seek judicial review of their administrative removal decisions. Therefore, the State party submits that it is difficult to see how the authors have experienced a violation of their right to a hearing or an effective recourse. Lastly, the State party submits that the authors are dissatisfied with Canada's determination that they are not in need of protection given that they can live without a real risk in another part of India. In this line, the State party notes that the authors' lack of satisfaction is not proof of a violation of their procedural rights.

6.12 In relation with the allegations made by the authors regarding a violation of article 2 of the Covenant, the State party argues that this article does not recognize an independently available right to a remedy and cannot independently give rise to a claim in a communication,<sup>18</sup> unless a violation of the Covenant has been established. The State party claims that, given that the authors have not established any of such violations, these allegations are also incompatible with the provisions of the Covenant. The State party adds that even if article 2 provided for a separate right, there would be no violation, given that the State party has provided the authors with several effective remedies to determine their claims. The State party claims that the authors have not demonstrated how such proceedings, either individually or taken together, might fall short of the State party's obligation.

6.13 Lastly, the State party notes that it is not the role of the Committee to re-evaluate the facts and evidence of a communication, unless it is manifest that the evaluation by the domestic tribunals was arbitrary or amounted to a denial of justice.<sup>19</sup> In this line, the State party submits that the material presented by the authors cannot support a finding that the Canadian decisions suffered from any such defects.

#### **Authors' comments on the State party's additional observations on admissibility and the merits**

7.1 In their comments of 30 October 2015, the authors reiterate their arguments on admissibility and the merits. They submit that the evidence presented is overwhelming and that there is no objective reason for it to be given no weight at all. They submit that "this is arbitrary and discriminatory and there was a miscarriage of justice".

7.2 The authors argue that the pre-removal risk assessment does not provide an effective recourse to ensure respect of the prohibition of non-refoulement to a substantial risk of torture. They submit that the Federal Court of Canada does not enforce compliance with the non-refoulement principle and does not provide a clear and effective recourse to victims of torture who apply for protection from deportation. The authors argue that there is a pattern of lack of respect for international law in the pre-removal risk assessment procedure and before the Federal Court on judicial review.

7.3 The authors reiterate that they have exhausted all domestic remedies. They informed the Committee that their second pre-removal risk assessment application was denied in December 2014 and that, in September 2013, after their son was born, they submitted an application for permanent resident status on humanitarian and compassionate grounds.

7.4 The authors contend that the evidence submitted shows new and ongoing danger and therefore should not have been rejected. They claim this was an arbitrary and wrongful analysis and a direct denial of justice. The authors state that they are shocked at how little importance has been given by the Canadian authorities to the letter of the Punjab Human Rights Organization submitted as new evidence.

7.5 The authors argue that the rejection by the pre-removal risk assessment officer based on purely procedural grounds despite all the evidence showing a substantial risk of torture does not respect the Canadian Charter of Rights and Freedoms or Canada's international human rights obligations. The authors submit that a political decision was taken to deny

<sup>18</sup> The State party refers to, inter alia, *P.K. v. Canada* (CCPR/C/89/D/1234/2003), para. 7.6, and Human Rights Committee, *S.E. v. Argentina*, communication No. 275/1988, para. 5.3.

<sup>19</sup> The State party refers to, inter alia, *Tarlue v. Canada* (CCPR/C/95/D/1551/2007), para. 7.4.

Sikh torture victims protection in Canada because they had an internal flight alternative and that “pre-removal risk assessment officers were trained to issue negative decisions”. Thus, they are neither independent nor impartial. The authors claim that the rejection of most of the new evidence presented by them because it related to what was previously alleged is an example of the latter. They further argue that the negative Federal Court decision on the stay of deportation illustrates the lack of access to an effective remedy. The authors note that the case was rejected because they were alleging the same risks as before. They claim that the Canadian judicial system does not provide “a way to correct blatant errors that could result in torture and death”. The authors submit that the situation in which the Federal Court is not taking any position on the substance of the cases but only controlling for procedural flaws does not represent an effective remedy under article 2 of the Covenant.

7.6 The authors note that many Sikh torture victims are being refused international protection in Canada and deported back to India because there is a serious misunderstanding of what constitutes an internal flight alternative. They submit that the application of an internal flight alternative should be limited to cases in which there would be state protection or a reasonable alternative for the torture victim. They claim that because they have been targeted by the power structure of the State of India and the dominant political party, they could not possibly live elsewhere in India. They state that they have a great deal of evidence of the continuing police pressure and searches to find them today.<sup>20</sup> The authors have family members who have previously been targeted for political activism and who have suffered torture and forced disappearance.<sup>21</sup> They claim that there is enough evidence to suggest that their case is a high-profile case.

7.7 The authors claim that there is no internal flight alternative available to them, given that it is generally held in refugee law that those who are targeted by state agents do not have a realistic possibility of an internal flight alternative. They add that there is no possibility of an internal relocation in India for people in their situation.<sup>22</sup>

7.8 The authors claim that there are serious and systematic problems with Canadian procedures for analysis of risk of return that are currently resulting in massive violations of international law. They argue that the pre-removal risk assessment decisions regarding their case were adopted without taking into account the context of human rights abuses against Sikhs and the culture of impunity in the Punjab police.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

8.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee takes note of the authors’ claim that they have exhausted all effective domestic remedies available to them. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 The Committee notes the authors’ claims that, in case of return to India, their rights under articles 6 and 7 of the Covenant would be violated. It notes, however, that after a thorough examination, the Refugee Division of the Immigration and Refugee Board of Canada denied the asylum application of the authors because: (a) there was an available and reasonable internal flight alternative, given that the problems of the authors were local in nature and confined to their home state of Punjab; (b) they had not established that they

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<sup>20</sup> The authors do not provide any supporting documentation in this regard.

<sup>21</sup> Ibid.

<sup>22</sup> The authors provide a series of news articles about the police identifying newcomers in various cities in India.



would be unable to lead a life free of personal risk in another part of India outside Punjab; and (c) they had not demonstrated that they suffered any incidents while living in Delhi or provided any evidence of a concrete risk of harm to them in Delhi. The authors' application to the Federal Court for leave to apply for judicial review of the decision of the Immigration and Refugee Board was dismissed. The pre-removal risk assessment officer, on the basis of the existence of an internal flight alternative and on the lack of probative value of the new documents submitted by the authors (see para. 6.4), found that there was no serious reason to believe that their lives would be at risk or that they would be victims of treatment incompatible with article 7 of the Covenant. The judicial review of the decision of the pre-removal risk assessment officer was also denied by the Federal Court. Lastly, the authors' application for permanent residence in the State party on humanitarian and compassionate grounds was rejected, given that the authors had not demonstrated that their return to India would constitute unusual, undeserved or disproportionate hardship for them.

8.5 The Committee recalls its jurisprudence that it is generally for the organs of States parties to the Covenant to assess facts and evidence in a case, unless it is found that such assessment was clearly arbitrary or amounted to a denial of justice.<sup>23</sup> The material before the Committee does not show that the proceedings before the authorities in the State party suffered from any such defects. Accordingly, the Committee considers that the authors have failed to substantiate their claims for purposes of admissibility, under articles 6 and 7 of the Covenant, and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8.6 The Committee further notes the authors' claim that the 12-month ineligibility period for submission of pre-removal risk assessment applications for claimants whose claims have been denied deprived them of any effective remedy in violation of article 13 of the Covenant. The Committee notes that this article lays down several conditions regarding alien expulsion that must be complied with by the State party concerned and that the expulsion shall be "in accordance with the law". The Committee recalls its jurisprudence that "the reference to 'law' in this context is to the domestic law of the State party concerned, though of course the relevant provisions of domestic law must in themselves be compatible with the provisions of the Covenant".<sup>24</sup> The Committee also recalls that "the interpretation of domestic law is essentially a matter for the courts and authorities of the State party concerned. It is not within the powers or functions of the Committee to evaluate whether the competent authorities of the State party in question have interpreted and applied the domestic law correctly in the case before it under the Optional Protocol, unless it is established that they have not interpreted and applied it in good faith or that it is evident that there has been an abuse of power."<sup>25</sup> In the present communication, the material before the Committee does not show that the proceedings before the authorities in the State party suffered from any such defects. Accordingly, the Committee considers that the authors have failed to substantiate their claims under article 13 of the Covenant for the purposes of admissibility and concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

8.7 As to the authors' claims under article 14 of the Covenant that they were not afforded the rights to a hearing and to an effective remedy, the Committee recalls that the concept of a "suit at law" under article 14 (1) of the Covenant is based on the nature of the right in question rather than on the status of one of the parties.<sup>26</sup> In the present communication, the proceedings relate to the authors' right to receive protection in the territory of the State party. The Committee recalls its jurisprudence<sup>27</sup> that proceedings relating to an alien's expulsion do not fall within the ambit of a determination of "rights and

<sup>23</sup> *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.3; *B.L. v. Australia* (CCPR/C/112/D/2053/2011); *Z v. Australia* (CCPR/C/111/D/2049/2011), para. 9.3; *A.A. v. Canada* (CCPR/C/103/D/1819/2008); and *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.4.

<sup>24</sup> *Maroufidou v. Sweden* (CCPR/C/12/D/58/1979), para. 9.3.

<sup>25</sup> *Ibid.*, para. 10.1.

<sup>26</sup> Human Rights Committee, *Y.L. v. Canada*, communication No. 112/1981, paras. 9.1–9.2; *Casanovas v. France*, communication No. 441/1990, para. 5.2; and *Dimitrov v. Bulgaria* (CCPR/C/85/D/1030/2001), para. 8.3.

<sup>27</sup> See *P.K. v. Canada*.

obligations in a suit at law”, within the meaning of article 14 (1). It concludes that the deportation proceedings of the authors do not fall within the scope of article 14 (1) and are inadmissible *ratione materiae* pursuant to article 3 of the Optional Protocol.

8.8 Lastly, regarding the authors’ claims under article 2 of the Covenant, the Committee recalls that the provisions of article 2 lay down general obligations for State parties that cannot, by themselves and standing alone, give rise to a claim in a communication under the Optional Protocol.<sup>28</sup> The Committee thus considers that the authors’ claims to this effect cannot be sustained and that, accordingly, they are inadmissible under article 2 of the Optional Protocol.

9. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) That the present decision shall be transmitted to the State party and to the authors, through their counsel.

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<sup>28</sup> See *Kaur v. Canada* (CCPR/C/94/D/1455/2006), para. 7.6.